IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

LRs. of Damyanti Kumari VS. Board of Revenue & others.

S.B. CIVIL WRIT PETITION NO.174/1992
under Article 226 of the Constitution of India.

Date of order : 5th Sept., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. J.P. Joshi for the petitioners.
Mr. L.D. Khatri for the respondents.

BY THE COURT:-

Heard learned counsel for the parties.

This is one of the 6 references accepted by the Board of Revenue vide purported to be separate orders passed on 30th August, 1991 in reference case No.22 to 27/1989, though all the orders were passed in identical terms on cyclostiled draft by filling up the blanks for different parties and details.

The land in question was included in the

inventory of private properties prepared under the covenant between the erstwhile Ruler of Jaisalser State and the Government of India at the time of merger. Thus, it was the personal property of the then Ex-Ruler of Jaisalmer since merger of the estate with the Union of India. During the summary settlement of the land records, the aforesaid land was entered as Government land. In the column meant for tenant, name of Shri H.H. Shri Raghunath Singh son of Shri Girdhar Singh was entered as tenant and names of certain other persons were entered as shikmi cultivators. All the cultivators were described in the like manner. However, during in the permanent settlement which was completed on 21.11.1974, the name of Shri H.H. Shri Raghunath Sngh son of Shri Girdhar Singh alone has been entered as khatedar and the names of other persons shown in the summary settlement as sikhmi-cultivator did not find place.

The Collector, Jaisalmer on 25.4.1989 passed separate orders in respect of different set of khasra numbers but with common reasons and common

grounds that the entries made in the name of H.H. Shri Raghunath Singh in the aforesaid manner were erroneous. He, therefore, referred the 6 cases to the Board of Revenue under Section 82 of the Rajasthan Land Revenue Act for correcting the entries made in the aforesaid manner.

In respect of erstwhile Ruler it was stated that his name ought to have been entered as owner under Section 5 (25 A) of the Rajasthan Tenancy Act by assuming that the land in question was part of his estate even at the time of commencement of Rajasthan Tenancy Act and his name could have been entered only as owner. He could not have been recognised as a tenant but continued to be owner of the land. So far as the present petitioner Smt. Damyanti Kumari is concerned, it was stated in the order of reference that her name has been entered as khatedar in place of Ex-Ruler on the basis of transfer made in her favour by a registered gift deed in the year 1951 recognition of which was not factually and legally correct.

Apparently, the gift of 1951 preceded the commencement of the Rajasthan Tenancy Act or the Rajasthan Land Reforms and Acquisition of Estate Owners Act, 1963 and even prior to the commencement of the different Acts included in the Hindu Code Bill. The order also stated that in proceedings for mutating the land in favour of the present petitioners, which took place before Settlement Committee, the Collector, Jaisalmer himself was a party and in those proceedings (Revenue Misc. Case No.145/75 decided on 4.12.2005) the status of Ex-Ruler as a tenant of the land in question was admitted by him from which he cannot be permitted to resile. Pursuant to said order the petitioner was issued a separate pass-book by the Settlement Department recognising her as a tenant. No reason about illegality about the transfer or illegality in recording of the name of Smt. Damyanti Kumari, the present petitioner as a transferee from the erstwhile Ruler of Jaisalmer Shri Girdhar Singh has been pointed out. But it was assumed that the persons who were entered as cultivators in the summary settlement proceedings as 'Shikmees' would become the khatedars

on the commencement of the Rajasthan Land Reforms and Acquisition of Estate Owners Act, 1963 under Section 61 thereof, so that khatedari rights may be conferred on them.

In all 6 cases, references were accepted by the Board of Revenue and in all, 6 petitions were filed by the present petitioners, since deceased, arising out of the 6 reference cases No.22 to 27/1989 as noticed above. This petition relates to reference case No.22/1989. The writ petition No.6299/91 arising out of reference case No.25/1989 stood dismissed as a result of non-compliance of the peremptory order passed by this Court on 18.3.1994. However, the other 4 writ petitions No.171/1992, 172/1992, 173/1992 and 175/1992 came to be decided by a common order on 5th March, 2003. All the petitions were allowed by the aforesaid order.

The principal reason which weighed with the Court was that the orders of reference as well as the orders of the Board of Revenue accepting the references

have been found on erroneous assumption without considering the substantive rights acquired by other persons much before the commencement of Act of 1955, and real purpose behind making references was to confer khatedari rights merely by making alteration in land record by having resort to purported right to correct the wrong entires in the land records on the spacious plea that the land was not being cultivated personally by the person holding the land as Khudkast.

Taking into the consideration the various provisions of the Rajasthan Tenancy Act and the land Revenue Act, the Court found in the aforesaid decision dated 5.3.2003:-

> "Merely for the reason that it is owned by a land owner, it could not be classified as cultivated by a tenant unless the status of the land owner and his relationship with the physical occupant vis a vis the land for the purpose of cultivation is established in accordance with the provisions of the Rajasthan Tenancy Act as per the definition of 'the land cultivated personally.'"

It was also noticed by the Court that :-

"It was also apparent from the facts on record that before the Collector, material has been placed and objection was raised that land in question in village Hasuwa was transferred by way of a gift in favour of Smt. Damyanti Kumari, who was a widow, in lieu of her maintenance and recognizing the transfer, mutation was also made in the year 1973 after notice to all concerned including the State."

The Court further observed that :-

"In the case of lands held by a widow not only for becoming khudkast or cultivated personally or through personal supervision is not essential ingredient as per the definition noticed above. Significantly under Section 46 of the Rajasthan Tenancy Act, the restriction on letting or sub-letting of holding whether as a khudkast or a khatedar tenant would not apply in the case of a widow holder of a land. The land has been transferred to widow by the land holder in 1956, as per objection

raised by her and the material placed before the Collector, prior to summary or permanent settlement has taken place. The said transfer in favour of the petitioner has not been disputed and denied. It is not even the case of Collector that in the year 1956, the land owner could not have transferred his interest. By recognising said transfer, the mutation has been made in favour of the petitioner. In that event, entries made in favour of Smt. Damyanti Kumari on the basis of transfer from land owner in 1956 could not be assumed to be erroneous on the basis of a summary settlement which has taken place thereafter. For holding mutation it was required to find that the transfer claimed to have been made in favour of the petitioner was invalid, inoperative or ineffective for any reason, which would have required holding of an enquiry into facts through a properly instituted proceedings without any challenge to said transfer and obtaining a finding in that regard which could make the mutation in favour of Smt. Damyanti Kumari to be erroneous, the Collector could not have by assuming existence of certain facts and existence of certain state of affairs have involved administrative jurisdiction u/s 82 of Rajasthan Land Revenue Act to correct the

> entries in land record on facts which needed a judicial proceedings to establish such facts. Nor the Board in summary procedure could have assumed against apparent title vesting in petitioner through a registered gift in her favour from land owner prior to its acquisition under the Act of 1963."

The four petitions filed by the petitioner were accepted and the impugned orders of Board as well as of the Collector passed in each of four petitions were set aside making it clear that "this judgment will not preclude any party claiming right over the land in question according to the provisions of Rajasthan Tenancy Act or under the Rajasthan Land Reforms and Acquisition of Estate Owners Act, 1963 from taking recourse to the legal proceedings as may be available under law. This order also does not reflect in any way claim to such rights, if any, or the defence that may be available to those against whom such rights are claimed."

In view of the aforesaid, this petition also

deserves to succeed for the reasons stated in the earlier judgment of this Court in S.B. Civil Writ Petition No.171/1992 and three other petitions decided by the common order dated 5.7.2003.

However, the learned counsel for the respondents urged that this Court has noticed in the aforesaid judgment that in the present case one suit has been filed by one Ridmal Khan for declaring his khatedari interest and that suit has been decreed in his favour.

I find that Annex.R-11/1 filed with the reply to the writ petition is a decree obtained by Ridmal Khan without impleading any of the persons entered in the land record as a khatedar neither Raghunath Singh or Smt. Damyanti Kumari as party to the suit. The suit was filed against the State of Rajasthan by placing reliance on the judgment of the Board of Revenue dated 30th August, 1991 passed on the reference made by the Collector that the suit has been decreed in 1995 solely on the basis of order of Board of Revenue, which is in

challenge in this petition.

This Court has also noticed that pursuing of other remedies by the third parties is not affected by finding the order and setting aside that order. The claim independent of reference proceedings will not be shifted by this order and those remedies are independent of this judgment which is confined to orders passed in reference for making alteration in existing land records which destroys the presumption about their correctness to the detriment of persons in whose favour such entires exist. However, so far as making of the reference which proceeds on the same reasons as was the case in S.B. Civil Writ Petition No.171/1992 and other petitions referred to above of this Court the result in this case also cannot be different. Therefore, subject to right of respective parties to litigate their title in respect of the land in accordance with law by taking into account the existing entries and its effect, independent of the orders passed on the reference application, this writ petition is allowed. No advantage can be conferred on any party by resorting to purported change in entries in land

records in favour of any party. The judgment under challenge passed by the Board of Revenue as well as the order of the reference made by the Collector is quashed. No decree or order passed merely on the basis of the said order of Board of Revenue can also survive. The parties shall bear their own costs.

[RAJESH BALIA], J.

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